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United Nations

Report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996

Ninth session (28 March-1 April 2005)

General Assembly
Official Records
Sixtieth Session
Supplement No. 37 (A/60/37)*

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Note

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Chapter I
Introduction

1. The ninth session of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 was convened in accordance with paragraph 19 of General Assembly resolution 59/46 of 2 December 2004. The Committee met at Headquarters from 28 March to 1 April 2005.

2. In accordance with paragraph 9 of General Assembly resolution 51/210, the Ad Hoc Committee was open to all States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency.

3. On behalf of the Secretary-General, the Legal Counsel of the United Nations, Nicolas Michel, opened the ninth session of the Ad Hoc Committee.

4. At the 33rd meeting of the Committee, on 28 March 2005, the Committee re-elected Rohan Perera (Sri Lanka) as its Chairman. The Chairman informed the Committee that its two previously elected Vice-Chairmen, Carlos Fernando Díaz Paniagua (Costa Rica) and Albert Hoffmann (South Africa), as well as the Rapporteur, Lublin Dilja (Albania), were available to continue to act as members of the Bureau at the current session. However, Michael Bliss (Australia), the Committee's Vice-Chairman at the previous session, was no longer available. The Committee paid tribute to Mr. Bliss for his valuable contributions to the work of the Committee. The Committee then elected Maria Telalian (Greece) Vice-Chairperson. The Bureau was thus constituted as follows:

Chairman:
Rohan Perera (Sri Lanka)

Vice-Chairpersons:
Carlos Fernando Díaz Paniagua (Costa Rica)
Albert Hoffmann (South Africa)
Maria Telalian (Greece)

Rapporteur:
Lublin Dilja (Albania)

5. Václav Mikulka, Director of the Codification Division of the Office of Legal Affairs, acted as Secretary of the Ad Hoc Committee, assisted by Anne Fosty (Deputy Secretary). The Codification Division of the Office of Legal Affairs provided the substantive services for the Ad Hoc Committee.

6. At the same meeting, the Ad Hoc Committee adopted the following agenda (A/AC.252/L.14):

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Organization of work.
5. Consideration of the relevant questions contained in the mandate of the Ad Hoc Committee as set out in paragraph 18 of General Assembly resolution 59/46 of 2 December 2004.
6. Adoption of the report.

7. The Ad Hoc Committee had before it the reports on its eighth,[1] seventh[2] and sixth sessions,[3] the latter containing, inter alia, a discussion paper prepared by the Bureau on the preamble and article 1 of the draft comprehensive convention on international terrorism; a list of proposals made during the informal consultations on the preamble and article 1 appended to the report of the coordinator on the results of the informal consultations in the Ad Hoc Committee; the informal texts of articles 2 and 2 bis, prepared by the coordinator; the texts of articles 3 to 17 bis and 20 to 27 prepared by the Friends of the Chairman; and two texts of article 18, one circulated by the coordinator for discussion and the other proposed by the States members of the Organization of the Islamic Conference; as well as the reports of the Working Group of the Sixth Committee established at the fifty-ninth (A/C.6/59/L.10) and fifty-eighth (A/C.6/58/L.10) sessions of the General Assembly, the latter containing the lists of written amendments and proposals submitted by delegations in connection with the elaboration of a draft comprehensive convention (ibid., annex I.A, B and C).

8. The Committee also had before it a text of the draft international convention for the suppression of acts of nuclear terrorism, prepared by the Bureau of the Ad Hoc Committee for discussion during its eighth session.[4]

9. A list of written amendments and proposals submitted by delegations to the Ad Hoc Committee at its current session in connection with the elaboration of a draft comprehensive convention on international terrorism is contained in annex III.A to the present report.

10. A list of written amendments and proposals submitted by delegations to the Ad Hoc Committee at its current session in connection with the elaboration of a draft international convention for the suppression of acts of nuclear terrorism is contained in annex III.B to the present report.

[1] *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 37* (A/59/37).

[2] Ibid., *Fifty-eighth Session, Supplement No. 37* (A/58/37).

[3] Ibid., *Fifty-seventh Session, Supplement No. 37* (A/57/37 and Corr.1).

[4] Ibid., *Fifty-ninth Session, Supplement No. 37* (A/59/37), Annex III, para. 1.

Chapter II
Proceedings

11. The Ad Hoc Committee held three plenary meetings: the 33rd, on 28 March, the 34th, on 31 March, and the 35th, on 1 April 2005.

12. At the 33rd meeting, the Ad Hoc Committee held a general exchange of views on issues within its mandate pursuant to paragraph 18 of General Assembly resolution 59/46. An informal summary of those discussions, prepared by the Chairman, is contained in annex II to the present report. The informal summary is intended for reference purposes only and not as a record of the discussions.

13. Also at the 33rd meeting, the Ad Hoc Committee adopted its work programme. The Chairman reappointed Vice-Chairman Carlos Fernando Díaz Paniagua (Costa Rica) as the coordinator for the draft comprehensive convention on international terrorism and Vice-Chairmen Albert Hoffmann (South Africa) as the coordinator for the draft international convention for the suppression of acts of nuclear terrorism. The Ad Hoc Committee then decided to proceed with discussions in informal consultations of the Committee as a whole.

14. The informal consultations regarding the draft comprehensive convention, coordinated by Mr. Díaz Paniagua, were held on 28 and 29 March. The informal consultations on the outstanding issues pertaining to the draft international convention for the suppression of acts of nuclear terrorism, coordinated by Mr. Hoffmann, were held on 28, 29 and 30 March. Both coordinators also had informal contacts with interested delegations on 28, 29 and 30 March 2005.

15. At the 34th meeting, the coordinators presented their oral reports on the results of the informal consultations and informal contacts on the draft conventions. These reports are contained in annex II to the present report, for reference purposes only and not as a record of the discussions.

16. At its 35th meeting, on 1 April 2005, the Ad Hoc Committee finalized the draft international convention on the suppression of acts of nuclear terrorism, which is reproduced in the recommendation to the General Assembly contained in Chapter III of the present report.

17. Also at its 35th meeting, the Ad Hoc Committee adopted the report on its ninth session.

Chapter III
Recommendations

18. At the 35th meeting, the Ad Hoc Committee, bearing in mind General Assembly resolution 59/46 of 2 December 2004, decided to recommend that the Sixth Committee, at the sixtieth session of the Assembly, establish a working group with a view to finalizing the draft comprehensive convention on international terrorism and keep in its agenda the question of convening a high-level conference, under the auspices of the United Nations, to formulate a joint organized response of the international community to terrorism in all its forms and manifestations.

19. Also at the 35th meeting, the Ad Hoc Committee decided to recommend to the General Assembly the adoption, during its fifty-ninth session, of the following draft resolution, containing in its annex the draft International Convention for the Suppression of Acts of Nuclear Terrorism:

International Convention for the Suppression of Acts of Nuclear Terrorism

The General Assembly,

Having considered the text of the draft international convention for the suppression of acts of nuclear terrorism elaborated by the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 and the Working Group of the Sixth Committee,

1. *Adopts* the International Convention for the Suppression of Acts of Nuclear Terrorism annexed to the present resolution, and requests the Secretary-General to open the Convention for signature at United Nations Headquarters in New York from 14 September 2005 to 31 December 2006;

2. *Calls upon* all States to sign and ratify, accept, approve or accede to the Convention.

Annex

International Convention for the Suppression of Acts of Nuclear Terrorism

The States Parties to this Convention,

Having in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighbourliness and friendly relations and cooperation among States,

Recalling the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations of 24 October 1995,

Recognizing the right of all States to develop and apply nuclear energy for peaceful purposes and their legitimate interests in the potential benefits to be derived from the peaceful application of nuclear energy,

Bearing in mind the Convention on the Physical Protection of Nuclear Material of 1980,

Deeply concerned about the worldwide escalation of acts of terrorism in all its forms and manifestations,

Recalling the Declaration on Measures to Eliminate International Terrorism annexed to General Assembly resolution 49/60 of 9 December 1994, in which, inter alia, the States Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States,

Noting that the Declaration also encouraged States to review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all its forms and manifestations, with the aim of ensuring that there is a comprehensive legal framework covering all aspects of the matter,

Recalling General Assembly resolution 51/210 of 17 December 1996 and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism annexed thereto,

Recalling also that, pursuant to General Assembly resolution 51/210, an ad hoc committee was established to elaborate, inter alia, an international convention for the suppression of acts of nuclear terrorism to supplement related existing international instruments,

Noting that acts of nuclear terrorism may result in the gravest consequences and may pose a threat to international peace and security,

Noting also that existing multilateral legal provisions do not adequately address those attacks,

Being convinced of the urgent need to enhance international cooperation between States in devising and adopting effective and practical measures for the prevention of such acts of terrorism and for the prosecution and punishment of their perpetrators,

Noting that the activities of military forces of States are governed by rules of international law outside of the framework of this Convention and that the exclusion of certain actions from the coverage of this Convention does not condone or make lawful otherwise unlawful acts, or preclude prosecution under other laws,

Have agreed as follows:

Article 1

For the purposes of this Convention:

1. "Radioactive material" means nuclear material and other radioactive substances which contain nuclides which undergo spontaneous disintegration (a process accompanied by emission of one or more types of ionizing radiation, such as alpha-, beta-, neutron particles and gamma rays) and which may, owing to their radiological or fissile properties, cause death, serious bodily injury or substantial damage to property or to the environment.

2. "Nuclear material" means plutonium, except that with isotopic concentration exceeding 80 per cent in plutonium-238; uranium-233; uranium enriched in the isotope 235 or 233; uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore residue; or any material containing one or more of the foregoing;

Whereby "uranium enriched in the isotope 235 or 233" means uranium containing the isotope 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature.

3. "Nuclear facility" means:

(a) Any nuclear reactor, including reactors installed on vessels, vehicles, aircraft or space objects for use as an energy source in order to propel such vessels, vehicles, aircraft or space objects or for any other purpose;

(b) Any plant or conveyance being used for the production, storage, processing or transport of radioactive material.

4. "Device" means:

(a) Any nuclear explosive device; or

(b) Any radioactive material dispersal or radiation-emitting device which may, owing to its radiological properties, cause death, serious bodily injury or substantial damage to property or to the environment.

5. "State or government facility" includes any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of a Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.

6. "Military forces of a State" means the armed forces of a State which are organized, trained and equipped under its internal law for the primary purpose of national defence or security and persons acting in support of those armed forces who are under their formal command, control and responsibility.

Article 2

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally:

(a) Possesses radioactive material or makes or possesses a device:

(i) With the intent to cause death or serious bodily injury; or

(ii) With the intent to cause substantial damage to property or to the environment;

(b) Uses in any way radioactive material or a device, or uses or damages a nuclear facility in a manner which releases or risks the release of radioactive material:

(i) With the intent to cause death or serious bodily injury; or

(ii) With the intent to cause substantial damage to property or to the environment; or

(iii) With the intent to compel a natural or legal person, an international organization or a State to do or refrain from doing an act.

2. Any person also commits an offence if that person:

(a) Threatens, under circumstances which indicate the credibility of the threat, to commit an offence as set forth in paragraph 1 (b) of the present article; or

(b) Demands unlawfully and intentionally radioactive material, a device or a nuclear facility by threat, under circumstances which indicate the credibility of the threat, or by use of force.

3. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of the present article.

4. Any person also commits an offence if that person:

(a) Participates as an accomplice in an offence as set forth in paragraph 1, 2 or 3 of the present article; or

(b) Organizes or directs others to commit an offence as set forth in paragraph 1, 2 or 3 of the present article; or

(c) In any other way contributes to the commission of one or more offences as set forth in paragraph 1, 2 or 3 of the present article by a group of persons acting with a common purpose; such contribution shall be intentional and either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned.

Article 3

This Convention shall not apply where the offence is committed within a single State, the alleged offender and the victims are nationals of that State, the alleged offender is found in the territory of that State and no other State has a basis under article 9, paragraph 1 or 2, to exercise jurisdiction, except that the provisions of articles 7, 12, 14, 15, 16 and 17 shall, as appropriate, apply in those cases.

Article 4

1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations and international humanitarian law.

2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law are not governed by this Convention, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.

3. The provisions of paragraph 2 of the present article shall not be interpreted as condoning or making lawful otherwise unlawful acts, or precluding prosecution under other laws.

4. This Convention does not address, nor can it be interpreted as addressing, in any way, the issue of the legality of the use or threat of use of nuclear weapons by States.

Article 5

Each State Party shall adopt such measures as may be necessary:

(a) To establish as criminal offences under its national law the offences set forth in article 2;

(b) To make those offences punishable by appropriate penalties which take into account the grave nature of these offences.

Article 6

Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention, in particular where they are intended or calculated to provoke a state of terror in the general public or in a group of persons or particular persons, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature and are punished by penalties consistent with their grave nature.

Article 7

1. States Parties shall cooperate by:

(a) Taking all practicable measures, including, if necessary, adapting their national law, to prevent and counter preparations in their respective territories for the commission within or outside their territories of the offences set forth in article 2, including measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize, knowingly finance or knowingly provide technical assistance or information or engage in the perpetration of those offences;

(b) Exchanging accurate and verified information in accordance with their national law and in the manner and subject to the conditions specified herein, and coordinating administrative and other measures taken as appropriate to detect, prevent, suppress and investigate the offences set forth in article 2 and also in order to institute criminal proceedings against persons alleged to have committed those crimes. In particular, a State Party shall take appropriate measures in order to inform without delay the other States referred to in article 9 in respect of the commission of the offences set forth in article 2 as well as preparations to commit such offences about which it has learned, and also to inform, where appropriate, international organizations.

2. States Parties shall take appropriate measures consistent with their national law to protect the confidentiality of any information which they receive in confidence by virtue of the provisions of this Convention from another State Party or through participation in an activity carried out for the implementation of this Convention. If States Parties provide information to international organizations in confidence, steps shall be taken to ensure that the confidentiality of such information is protected.

3. States Parties shall not be required by this Convention to provide any information which they are not permitted to communicate pursuant to national law or which would jeopardize the security of the State concerned or the physical protection of nuclear material.

4. States Parties shall inform the Secretary-General of the United Nations of their competent authorities and liaison points responsible for sending and receiving the information referred to in the present article. The Secretary-General of the United Nations shall communicate such information regarding competent authorities and liaison points to all States Parties and the International Atomic Energy Agency. Such authorities and liaison points must be accessible on a continuous basis.

Article 8

For purposes of preventing offences under this Convention, States Parties shall make every effort to adopt appropriate measures to ensure the protection of radioactive material, taking into account relevant recommendations and functions of the International Atomic Energy Agency.

Article 9

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:

(a) The offence is committed in the territory of that State; or

(b) The offence is committed on board a vessel flying the flag of that State or an aircraft which is registered under the laws of that State at the time the offence is committed; or

(c) The offence is committed by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State; or

(b) The offence is committed against a State or government facility of that State abroad, including an embassy or other diplomatic or consular premises of that State; or

(c) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or

(d) The offence is committed in an attempt to compel that State to do or abstain from doing any act; or

(e) The offence is committed on board an aircraft which is operated by the Government of that State.

3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established under its national law in accordance with paragraph 2 of the present article. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.

4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the

alleged offender is present in its territory and it does not extradite that person to any of the States Parties which have established their jurisdiction in accordance with paragraph 1 or 2 of the present article.

5. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its national law.

Article 10

1. Upon receiving information that an offence set forth in article 2 has been committed or is being committed in the territory of a State Party or that a person who has committed or who is alleged to have committed such an offence may be present in its territory, the State Party concerned shall take such measures as may be necessary under its national law to investigate the facts contained in the information.

2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its national law so as to ensure that person's presence for the purpose of prosecution or extradition.

3. Any person regarding whom the measures referred to in paragraph 2 of the present article are being taken shall be entitled:

(a) To communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;

(b) To be visited by a representative of that State;

(c) To be informed of that person's rights under subparagraphs (a) and (b).

4. The rights referred to in paragraph 3 of the present article shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

5. The provisions of paragraphs 3 and 4 of the present article shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 9, paragraph 1 (c) or 2 (c), to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. When a State Party, pursuant to the present article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article 9, paragraphs 1 and 2, and, if it considers it advisable, any other interested States Parties, of the fact that that person is in custody and of the circumstances which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 of the present article shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.

Article 11

1. The State Party in the territory of which the alleged offender is present shall, in cases to which article 9 applies, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Whenever a State Party is permitted under its national law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1 of the present article.

Article 12

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international law of human rights.

Article 13

1. The offences set forth in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of this Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.

2. When a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with article 9, paragraphs 1 and 2.

5. The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in article 2 shall be deemed to be modified as between States Parties to the extent that they are incompatible with this Convention.

Article 14

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 2, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their national law.

Article 15

None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

Article 16

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 2 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Article 17

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of testimony, identification or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences under this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent; and

(b) The competent authorities of both States agree, subject to such conditions as those States may deem appropriate.

2. For the purposes of the present article:

(a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;

(b) The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;

(c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State to which he or she was transferred.

3. Unless the State Party from which a person is to be transferred in accordance with the present article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to his or her departure from the territory of the State from which such person was transferred.

Article 18

1. Upon seizing or otherwise taking control of radioactive material, devices or nuclear facilities, following the commission of an offence set forth in article 2, the State Party in possession of such items shall:

(a) Take steps to render harmless the radioactive material, device or nuclear facility;

(b) Ensure that any nuclear material is held in accordance with applicable International Atomic Energy Agency safeguards; and

(c) Have regard to physical protection recommendations and health and safety standards published by the International Atomic Energy Agency.

2. Upon the completion of any proceedings connected with an offence set forth in article 2, or sooner if required by international law, any radioactive material, device or nuclear facility shall be returned, after consultations (in particular, regarding modalities of return and storage) with the States Parties concerned to the State Party to which it belongs, to the State Party of which the natural or legal person owning such radioactive material, device or facility is a national or resident, or to the State Party from whose territory it was stolen or otherwise unlawfully obtained.

3. (a) Where a State Party is prohibited by national or international law from returning or accepting such radioactive material, device or nuclear facility or where the States Parties concerned so agree, subject to paragraph 3 (b) of the present article, the State Party in possession of the radioactive material, devices or nuclear facilities shall continue to take the steps described in paragraph 1 of the present article; such radioactive material, devices or nuclear facilities shall be used only for peaceful purposes;

(b) Where it is not lawful for the State Party in possession of the radioactive material, devices or nuclear facilities to possess them, that State shall ensure that they are placed as soon as possible in the possession of a State for which such possession is lawful and which, where appropriate, has provided assurances consistent with the requirements of paragraph 1 of the present article in consultation with that State, for the purpose of rendering it harmless; such radioactive material, devices or nuclear facilities shall be used only for peaceful purposes.

4. If the radioactive material, devices or nuclear facilities referred to in paragraphs 1 and 2 of the present article do not belong to any of the States Parties or to a national or resident of a State Party or was not stolen or otherwise unlawfully obtained from the territory of a State Party, or if no State is willing to receive such items pursuant to paragraph 3 of the present article, a separate decision concerning its disposition shall, subject to paragraph 3 (b) of the present article, be taken after consultations between the States concerned and any relevant international organizations.

5. For the purposes of paragraphs 1, 2, 3 and 4 of the present article, the State Party in possession of the radioactive material, device or nuclear facility may request the assistance and cooperation of other States Parties, in particular the States Parties concerned, and any relevant international organizations, in particular the International Atomic Energy Agency. States Parties and the relevant international organizations are encouraged to provide assistance pursuant to this paragraph to the maximum extent possible.

6. The States Parties involved in the disposition or retention of the radioactive material, device or nuclear facility pursuant to the present article shall inform the Director General of the International Atomic Energy Agency of the manner in which such an item was disposed of or retained. The Director General of the International Atomic Energy Agency shall transmit the information to the other States Parties.

7. In the event of any dissemination in connection with an offence set forth in article 2, nothing in the present article shall affect in any way the rules of international law governing liability for nuclear damage, or other rules of international law.

Article 19

The State Party where the alleged offender is prosecuted shall, in accordance with its national law or applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

Article 20

States Parties shall conduct consultations with one another directly or through the Secretary-General of the United Nations, with the assistance of international organizations as necessary, to ensure effective implementation of this Convention.

Article 21

The States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

Article 22

Nothing in this Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other State Party by its national law.

Article 23

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months of the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.

2. Each State may, at the time of signature, ratification, acceptance or approval of this Convention or accession thereto, declare that it does not consider itself bound by paragraph 1 of the present article. The other States Parties shall not be bound by paragraph 1 with respect to any State Party which has made such a reservation.

3. Any State which has made a reservation in accordance with paragraph 2 of the present article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 24

1. This Convention shall be open for signature by all States from 14 September 2005 until 31 December 2006 at United Nations Headquarters in New York.

2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

3. This Convention shall be open to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 25

1. This Convention shall enter into force on the thirtieth day following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 26

1. A State Party may propose an amendment to this Convention. The proposed amendment shall be submitted to the depositary, who circulates it immediately to all States Parties.

2. If the majority of the States Parties request the depositary to convene a conference to consider the proposed amendments, the depositary shall invite all States Parties to attend such a conference to begin no sooner than three months after the invitations are issued.

3. The conference shall make every effort to ensure amendments are adopted by consensus. Should this not be possible, amendments shall be adopted by a two-thirds majority of all States Parties. Any amendment adopted at the conference shall be promptly circulated by the depositary to all States Parties.

4. The amendment adopted pursuant to paragraph 3 of the present article shall enter into force for each State Party that deposits its instrument of ratification, acceptance, accession or approval of the amendment on the thirtieth day after the date on which two thirds of the States Parties have deposited their relevant instrument. Thereafter, the amendment shall enter into force for any State Party on the thirtieth day after the date on which that State deposits its relevant instrument.

Article 27

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

Article 28

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at United Nations Headquarters in New York on 14 September 2005.

Annex I

Informal summary, prepared by the Chairman, of the general discussion at the plenary meeting held on 28 March 2005

1. Delegations reiterated their unequivocal condemnation of all acts and practices of terrorism as criminal and unjustifiable, regardless of their motivation, objectives, forms and manifestations, and reaffirmed their commitment to combating terrorism. It was stressed that terrorism endangered the continued existence of open and democratic societies, posed a grave threat to national and international security and to the values of the United Nations, namely the peaceful settlement of disputes, tolerance among peoples and nations, respect for the rule of law, protection of civilians and enjoyment of human rights, including the right to life. The view was also stressed that terrorism undermined the civil and political, as well as the economic and social rights of individuals.

2. Some delegations recalled that terrorism had no religion, race, nationality or culture, nor was it confined to any particular region. The need for enhancing dialogue among civilizations and fostering intercultural understanding and cooperation was also underscored.

3. Some delegations emphasized the moral duty to address the root causes of terrorism, such as poverty, social deprivation, abuse of human rights, intolerance, sense of powerlessness, cultural and religious discrimination, misperception, despair and resentment, all of which provided propitious grounds for terrorist activities.

4. Delegations stressed that the fight against terrorism must be conducted in full compliance with the obligations under the Charter of the United Nations and international law, including international humanitarian law, where applicable.

5. The point was made that acts of terrorism constituted a major factor threatening the stability and sovereignty of States. In that connection, acts of unilateralism were characterized as being in contravention of the recognized principles of international law, such as respect for State sovereignty, non-interference in internal affairs and the need to take decisions on the basis of international consensus.

6. Some delegations made references to the provisions relating to terrorism in the report of the High-level Panel on Threats, Challenges and Change, entitled "A more secure world: our shared responsibility" (A/59/565 and Corr.1), as well as in the report of the Secretary-General, entitled "In larger freedom: towards development, security and human rights for all" (A/59/2005). They noted with appreciation the statement of the Secretary-General outlining the strategy for fighting terrorism delivered at the International Summit on Democracy, Terrorism and Security, held in Madrid from 8 to 11 March, as well as his address at the summit meeting of the League of Arab States, held in Algiers on 22 and 23 March 2005. Reference was also made to the recommendation of the High-level Panel, stressing that the use of force by States was thoroughly regulated by international law, including the law of armed conflicts, whereas the use of force by non-State actors, such as acts of terrorism, was not effectively regulated. The view was expressed that the conducive atmosphere created by the report of the High-level Panel (A/59/565) and the report of the Secretary-General (A/59/2005) should enable the Ad Hoc Committee to

complete its work before the upcoming summit meeting during the commemorative session celebrating the sixtieth anniversary of the United Nations.

7. Delegations stressed the imperative for States to mobilize their political will with a view to arriving at a consensus to finalize the draft comprehensive convention on international terrorism and the draft international convention for the suppression of acts of nuclear terrorism. Furthermore, the view was expressed that the General Assembly, which had successfully contributed to the legal framework of international counter-terrorism instruments, should not delay any further in completing these two draft conventions, since any such delay would only convey a wrong signal to the international community. A point was made that the early adoption of the two conventions would reinforce and revitalize the prerogatives of the General Assembly as the legislative body of the United Nations and help to avoid an overlap between the work of the Assembly and other organs of the Organization dealing with terrorism. A view was expressed in support of the recommendation of the report of the High-level Panel (A/59/565), emphasizing the particular value of achieving a consensus definition of terrorism within the General Assembly, given its unique legitimacy in norm-setting.

8. Some delegations recalled that, under the terms of paragraph 18 of General Assembly resolution 59/46 of 2 December 2004, the Ad Hoc Committee should, on an expedited basis, continue to elaborate the draft comprehensive convention on international terrorism and resolve the outstanding issues relating to the elaboration of the draft nuclear terrorism convention. Support was expressed for the work being done by the Ad Hoc Committee, with some delegations reiterating their appeal to finalize the two draft conventions as soon as possible. They stressed that the successful conclusion of negotiations on both draft conventions during the current session of the Ad Hoc Committee would add to a comprehensive United Nations strategy against international terrorism, as articulated by the Secretary-General at the International Summit on Democracy, Terrorism and Security. It would also complete the corpus of legislation designed to tackle in a pragmatic way the various terrorist offences as defined and prohibited by those instruments.

9. A point was made that, in order to combat terrorism effectively, the international legal framework against terrorists should be strengthened on the basis of the principle *aut dedere aut judicare* (prosecute or extradite).

10. Some delegations recalled the declaration adopted by the Organization of the Islamic Conference on 30 September 2003 that endorsed the initiative launched by Tunisia to elaborate by consensus an international counter-terrorism code of conduct to which States would adhere on a voluntary basis and urged the United Nations and international organizations to support that initiative.

11. Some delegations appealed to States that had not yet done so to become parties to the existing 12 universal conventions and protocols related to the prevention and suppression of international terrorism, in particular the 1999 International Convention for the Suppression of the Financing of Terrorism. They stressed the great value of the comprehensive legal framework in the field of counter-terrorism established thus far by the United Nations and certain specialized agencies. References were also made to various regional events aimed at promoting accession to the existing global and regional counter-terrorism instruments.

12. Some delegations expressed appreciation for the work of the Counter-Terrorism Committee and urged the continued cooperation of all States to facilitate its activities.

13. Support was also expressed for the work carried out by the Terrorism Prevention Branch of the United Nations Office on Drugs and Crime (UNODC) in assisting States in becoming parties to the relevant international counter-terrorism instruments and in implementing them. The view was expressed that the fight against terrorism would have little success if efforts were not made to provide immediate technical assistance to those States that needed capacity-building in this area. One delegation pledged to contribute financially to the Office starting from the coming fiscal year for technical assistance in the field of counter-terrorism for countries in need. In addition, that delegation stated that it would continue to extend assistance to States that needed to strengthen their capacity to fight terrorism.

14. Reference was made by some delegations to specific acts of terrorism worldwide and in their countries.

15. Some delegations referred to the new proposals that they submitted for consideration at the current session of the Ad Hoc Committee, relating to the two draft instruments.

Elaboration of a draft comprehensive convention on international terrorism

16. Delegations expressed their support for the early adoption by consensus of a comprehensive convention against terrorism. Some delegations stressed the importance of establishing a comprehensive international legal framework for the fight against terrorism, and of filling the lacunae in the existing counter-terrorism regime. In this regard, concern was expressed over the lack of progress in the negotiation of the comprehensive convention.

17. Some delegations pointed out that the comprehensive convention should bring added value to the existing sectoral conventions, while at the same time preserving their *acquis*. In order to achieve that goal, the Ad Hoc Committee was urged to clarify the relationship between the draft comprehensive convention and the sectoral conventions.

18. With respect to the main outstanding issues, some delegations expressed their support for draft articles 2, 2 bis and 18, as prepared by the Coordinator.[a] A point was also made that the concerns of all delegations, including those articulated by the States members of the Organization of the Islamic Conference, should be taken into account.

19. Some delegations stressed the importance of arriving at a clear and precise legal definition of terrorism. Reference was made to the elements of the definition suggested in the report of the High-level Panel on Threats, Challenges and Change (A/59/565) and in the report of the Secretary-General (A/59/2005), as well as in Security Council resolution 1566 (2004) of 8 October 2004. Some delegations characterized the proposed elements as encouraging and constituting a good basis for further in-depth discussions with a view to arriving at a consensus definition. It was pointed out that the definition of terrorism offered in the report of the High-

[a] For the texts, see *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 37* and corrigendum (A/57/37 and Corr.1), annexes II and IV.

level Panel took into consideration the relevant provisions of paragraph 3 of resolution 1566 (2004). That definition also took into account the definitions of terrorist acts contained in the existing counter-terrorism instruments, where such acts were defined according to their objective and purpose.

20. In order to reach an agreement on a universal definition of terrorism, a strong preference was expressed for focusing on the purpose and objective of terrorist acts rather than on the description of perpetrators. The view was expressed that acts of terrorism differed from other crimes because of their intention, in particular, to provoke and keep a state of terror in the general public or to compel a Government or an international organization to do or abstain from doing any act. Some delegations were of the view that the existing draft article 2 fulfilled the purpose of such a broad definition. The point was also made that an agreed definition of terrorism would be possible only as an outcome of a process where the general membership of the United Nations was fully involved in its formulation.

21. Other delegations reiterated that a legal definition of terrorism must make an unequivocal distinction between acts of terrorism and the legitimate struggle of peoples for self-determination. In this connection, it was observed that the Charter of the United Nations, relevant resolutions of the General Assembly and the Security Council, international instruments on human rights, the jurisprudence of the International Court of Justice, as well as the relevant practices by the organs and Members of the Organization confirmed the legally binding character of the right to self-determination. According to that view, the fight against terrorism should not undermine the right to self-determination or lead to violations of human rights.

22. While some delegations were in favour of reflecting in the draft convention the concept of "State terrorism", a point was made that, in the light of the view expressed in the report of the Secretary-General (A/59/2005), debates on "State terrorism" should be set aside.

23. The view was expressed that no exception should be provided for acts of military forces that were not in conformity with the Charter and international law. Furthermore, the point was made that activities of armed forces that were not covered by international humanitarian law should not be excluded from the scope of the comprehensive convention.

Elaboration of a draft international convention for the suppression of acts of nuclear terrorism

24. Delegations called for the completion of the draft international convention for the suppression of acts of nuclear terrorism during the current session of the Ad Hoc Committee. The point was made that the draft nuclear terrorism convention would play a crucial role in preventing terrorist groups from gaining access to the weapons of mass destruction, in particular nuclear arms. In that connection, the view was also expressed that the only way to guarantee that terrorist groups did not acquire such weapons was to eliminate them altogether.

25. It was observed that the adoption of the draft nuclear terrorism convention would constitute an important contribution by the General Assembly to the strengthening of the international legal framework for counter-terrorism measures. Failure to adopt that instrument would embolden perpetrators of terrorist acts. Furthermore, the point was made that once the nuclear terrorism convention was

adopted, the Ad Hoc Committee could concentrate its efforts on solving the remaining outstanding issues relating to the draft comprehensive convention.

26. Some delegations voiced their support for the text of the draft nuclear terrorism convention prepared by the Bureau of the Ad Hoc Committee during its eighth session[b] and characterized it as a balanced text resulting from many years of negotiations and compromise. Other delegations observed that the text was basically complete and constituted a good basis for further deliberation with the aim of finalizing it at the current session of the Ad Hoc Committee. It was stressed that political divergences had to be reconciled, with some delegations calling for flexibility and good will so as to adopt the draft nuclear terrorism convention by consensus. Some delegations emphasized their will to continue to strive for the adoption of the draft nuclear terrorism convention by consensus, but stressed that the time had come to find an agreement on the instrument.

27. The view was expressed that the concerns raised with regard to the scope of application of the draft nuclear terrorism convention pointed to a problem of a more general nature whose solution would go beyond the scope of the sectoral conventions. The point was also made that the draft nuclear terrorism convention should be considered on its own merits and that the outstanding issues pertaining to the instrument should be resolved separately from those relating to the draft comprehensive convention.

28. Furthermore, it was observed that draft article 4 was based on the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of the Financing of Terrorism, and that it constituted a compromise text aimed at bridging the diverging views on the matter. It was also recalled that the current wording of draft article 4 was supported by a large majority of delegations.

29. The Ad Hoc Committee was informed by one delegation that, in a spirit of compromise and to facilitate the adoption of the nuclear terrorism convention by consensus, it had withdrawn its proposal relating to draft article 4 contained in document A/AC.252/2005/WP.1.

Question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations

30. Some delegations endorsed the proposal to convene a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations. It was suggested that that conference could, among other things, consider formulating an international counter-terrorism code of conduct with a view to facilitating the cooperation of States in the fight against terrorism.

[b] Ibid., *Fifty-ninth Session, Supplement No. 37* (A/59/37), annex III, para. 1.

Annex II

Reports of the coordinators on the results of the informal consultations

A. Draft international convention for the suppression of acts of nuclear terrorism

1. As coordinator on the draft international convention for the suppression of acts of nuclear terrorism, I conducted informal consultations open to all delegations on 28 and 29 March 2005. The consultations focused on four new proposals presented by the delegations of Cuba (A/AC.252/2005/WP.2), Egypt (A/AC.252/2005/WP.3), the United States of America (A/AC.252/2005/WP.4) and the Islamic Republic of Iran (A/AC.252/2005/WP.5).

2. In the course of the informal consultations, the proposals were introduced by their respective sponsors, and were the subject of extensive discussions. Although the exchange of views proved to be useful, it became clear towards the end of those consultations that the proposals did not enjoy general support and the prospects for their possible inclusion in the draft convention seemed rather slim.

3. Therefore, I invited the sponsors to a meeting on 29 March 2005, in which I conveyed to them my concern and requested them to consider, in consultation with their capitals, withdrawing their proposals. I briefed delegations accordingly on 30 March.

4. After the action taken by the delegation of Cuba, I am now in a position to report that all proposals have been withdrawn. Consequently, the only text that remains on the table is the draft international convention for the suppression of acts of nuclear terrorism, contained in annex III of the Ad Hoc Committee's latest report (A/59/37). As a result, the Ad Hoc Committee may wish to present the text of the draft convention to the General Assembly for adoption. By presenting the draft convention to the General Assembly the Ad Hoc Committee would positively respond to the expectations of the international community and pleas made by the Secretary-General. Undoubtedly, the convention would make a substantive contribution towards strengthening the international legal framework for the suppression and combating of terrorism.

5. I would also like to draw attention to the blank spaces in paragraph 1 of Article 24 of the draft convention, relating to dates for the opening of the draft convention for signature, and for its closure. Following consultations with delegations, I would like to suggest that the draft convention be opened for signature on the date of the commencement of the high-level plenary meeting of the General Assembly at its sixtieth session, i.e. 14 September 2005. Following the existing practice, the signature period should be closed at the end of the month of December of the following year, i.e. 31 December 2006.

6. I thus conclude my role as coordinator of the informal consultations on the draft international convention for the suppression of acts of nuclear terrorism, a task that was assigned to me by the Chairman some four years ago. Allow me to express my appreciation to all delegations for their support and cooperation over these years and for the constructive spirit that prevailed at all times during our consultations. In particular, I would like to thank the delegations of Pakistan, Cuba, Egypt, United

States and the Islamic Republic of Iran for their understanding and cooperation, which enabled the Ad Hoc Committee to finalize work on the draft convention. My appreciation also goes to the delegation of the Russian Federation for the initiative they undertook more than seven years ago, in introducing the important issue of nuclear terrorism in the Ad Hoc Committee and for presenting the initial draft convention, on which the current draft is based. Allow me also to thank the members of the Bureau for their support and advice. I also recognize the important role that my predecessor, Richard Rowe, played and the efforts he undertook.

B. Draft comprehensive convention on international terrorism

Introduction

1. During the last three days I have conducted consultations on the pending issues regarding the draft comprehensive convention. In those consultations, my main objective was to give due consideration to the recommendations contained in section VI, paragraph 164, of the report of the High-level Panel on Threats, Challenges and Change, entitled "A more secure world: our shared responsibility" (A/59/565), that may have a direct impact on our negotiations, as well as the recommendation 6 (d) of the report of the Secretary-General, "In larger freedom: towards development, security and human rights for all" (A/59/2005). It should be noted that most delegations felt that the current session of the Ad Hoc Committee should focus on the conclusion of the international convention for the suppression of acts of nuclear terrorism, while maintaining the momentum on the comprehensive convention with the view to its adoption during the sixtieth session of the General Assembly, as it was suggested by the Secretary-General in his report.

2. In this report, as is the Committee's long-standing practice, I will begin by providing a factual summary of the discussion during the informal consultations and the bilaterals. Later, I will put forward some personal observations on where the negotiations stand at the moment and how to move forward.

Summary

3. On 28 and 29 March 2005, in my capacity as coordinator, I conducted informal consultations on the draft comprehensive convention on international terrorism. As in the past, the informal consultations were open to all delegations. With the agreement of the delegations participating, the International Committee of the Red Cross attended as an observer. I also held bilateral contacts with delegations on 28, 29 and 30 March.

4. As noted before, the consultations focused mainly on the outstanding issues relating to the comprehensive convention in the light of recent developments, in particular, the issuance of the report of the High-level Panel on Threats, Challenges and Change, as well as the recent report of the Secretary-General, "In larger freedom: towards development, security and human rights for all" (A/59/2005).

5. The basic texts of reference for the consultations continued to be the two texts relating to draft article 18, one circulated by the former coordinator and the other proposed by member States of the Organization of Islamic Conference (OIC),

contained in annex IV of the 2002 report of the Ad Hoc Committee;[a] and the informal texts of articles 2 and 2 bis prepared by the former coordinator, contained in annex II of that report. In addition, the informal consultations had received a proposal submitted by Cuba to add a new paragraph 4 (d) to draft article 2, contained in document A/AC.252/2005/WP.2, and the suggestions on terrorism contained in paragraph 164 of the report of the High-level Panel.

Consideration of the suggestions contained in the report of the High-level Panel on Threats, Challenges and Change and the report of the Secretary-General

6. I invited delegations to focus on how the report of the High-level Panel and the report of the Secretary-General related to our work.

7. Delegations welcomed the call by the High-level Panel and the Secretary-General to re-energize our work and, in particular, the Secretary-General's call that the Ad Hoc Committee conclude the draft comprehensive convention before the end of the sixtieth session of the General Assembly.

8. The comments and observations on the two reports were pointed and thorough. On the one hand, there was the view that the elements for a definition of terrorism offered in the two reports could help to inform the debate but that they are not to be understood as intended to replace texts negotiated by the Ad Hoc Committee over the years. It was stressed that the Panel had suggested some basic elements, but not a complete definition of terrorism. Some delegations suggested that it was necessary to draw a clear distinction between principles suggested by the Panel and the actual language that it used.

9. Moreover, some delegations noted that, while the broad statements of principle in the two reports were useful, the Ad Hoc Committee, as a legal committee, had a different task, namely, to develop terms in a precise manner that would be suitable for a legal instrument. The mandate of the Ad Hoc Committee was, in that sense, different from the goal embraced by the proposals contained in the two reports. It was acknowledged that the focus of the Ad Hoc Committee was not to elaborate a political definition, suitable for a political declaration, but rather to elaborate a technical definition appropriate for a criminal law instrument.

10. In this connection, delegations noted that substantial progress had already been made by the Ad Hoc Committee on a definition of terrorism. There was already near consensus on what elements should be included in the criminal offence object of the draft comprehensive convention. As it was, draft article 2 was well developed, and more detailed than the proposals of the High-level Panel report. Moreover, it was better drafted from a technical legal point of view. Indeed, the essential elements of the proposals of the High-level Panel report were already covered by draft article 2. The use of the neutral term "persons" in the present article 2 was more accurate than the expression "civilians or non-combatants" used in the report of the High-level Panel. Moreover, article 2 covered other forms of terrorist criminal activity, such as participation, inchoate crimes and criminal conspiracy.

11. Some delegations underscored that the problem was not what to include in the definition, but what to exclude from the scope of the draft convention. It was recalled that that was not unusual; the negotiators of the Convention on the Safety

[a] *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 37* and corrigendum (A/58/37 and Corr.1).

of United Nations and Associated Personnel, for example, were confronted with a similar problem. According to this view, it was therefore reasonable, having dealt with the main positive elements of the crime in draft article 2, to focus attention now on article 18, which was intended to deal with issues that ought to be excluded from the scope of application of the draft comprehensive convention.

12. On the other hand, there was another set of views that, while acknowledging the importance of defining terrorism, noted that the elements of the definition proposed in the report of the Secretary-General were not balanced and all-inclusive. Some delegations were rather critical of the elements contained in the report of the High-level Panel and the suggestions contained in the report of the Secretary-General. Those delegations noted that the second report had not taken into account the input of the High-level Panel Report that Member States of the Organization of the Islamic Conference and the Non-Aligned Movement (NAM) had offered to the Secretary-General on the definition of terrorism. In this regard, the attention of the Ad Hoc Committee was drawn to statements and position papers of the Organization of the Islamic Conference and the Non-Aligned Movement made in the context of the consultations of the plenary of the General Assembly on the report of the High-level Panel.

13. Moreover, those delegations noted that the definition suggested both in the report of the High-level Panel and in the report of the Secretary-General, contrary to the right of self-determination enshrined in the Charter of the United Nations, ignored the right of national liberation movements fighting against colonial domination and alien occupation in the exercise of that right. Such exclusions were considered unacceptable for those delegations and those omissions would make it difficult for the General Assembly to make progress on the matter. It was also observed that the suggestions also omitted elements concerning State terrorism. In particular, those delegations noted that the suggestion contained in the report of the Secretary-General that "it was time to set aside debates on the so-called 'State terrorism' because the use of force by States was already thoroughly regulated under international law" was inaccurate, insofar as there were situations where activities of military forces of a State were currently not regulated by international humanitarian law.

14. It was also recalled that the elements proposed by the High-level Panel relied heavily on paragraph 3 of Security Council resolution 1566 (2004), notwithstanding that some members of the Council had indicated that that paragraph did not represent a definition. For some delegations, the elements of the definition proposed in the report of the High-level Panel contained certain loopholes. Regarding the suggestions by the Secretary-General some delegations noted that the negotiation of a definition of terrorism was an exclusive right of Member States.

15. For some delegations, the focus of future work could include other issues beyond the drafting of article 18, which could be addressed separately or in combination with article 18. They stressed that the core problem lay in the lack of distinction between activities during peacetime and activities during armed conflict. Although it might be possible to exclude all activities during an armed conflict from the scope of the comprehensive convention, it was suggested that there ought to be a distinction between those elements that would be applicable during times of peace and those applicable during armed conflict. For those delegations, while article 2 was appropriate during peacetime, it lacked certain elements necessary for its

application during armed conflict. In this regard, they argued that it would be better to limit the discussion to questions concerning civilians during armed conflict as well as non-military targets. They also stressed that a civilian who forfeited his or her protection under international humanitarian law loses the status of non-combatant but that fact does not mean necessarily that he should be considered a terrorist under the draft comprehensive convention. They argued that a person may qualify as a terrorist only when the act perpetrated is a terrorist act. For those delegations, article 18 of the draft convention should not serve to challenge long-standing rules of international humanitarian law.

16. Other delegations cautioned against drawing a distinction between the provisions applicable in respect of combatants and civilians. Such an exercise would require the renegotiation of international humanitarian law, a task which is beyond the mandate of the Ad Hoc Committee. In this regard, attention was drawn to the recent study identifying 161 rules of customary international humanitarian law, sponsored by the International Committee of the Red Cross.

Discussions on article 2, article 2 bis and article 18

17. During the consultations, all delegations confirmed the linkage that exists between articles 2, 2 bis and 18 and the understanding that these draft articles should be considered as part of an overall package. Although some delegations would like to have some amendments made to draft article 2, they have indicated to the Coordinator their willingness to withdraw such proposals in the event of a satisfactory solution on draft article 18 and agreement on the overall package.

Article 2

18. With regard to article 2, the sponsor of the proposal contained in document A/AC.252/2005/WP.2 noted that its proposal was an attempt to explore a possible solution to the problems relating to article 18. It expressed the hope the proposal would generate the interest of delegations and would help to move the discussion on the matter forward. It underscored the importance of including within the scope of the draft comprehensive convention the actions of armed forces of a State that fall outside the scope of international humanitarian law. It was asserted that the draft comprehensive convention should aim at closing all the loopholes that currently exist in the various sectoral multilateral anti-terrorism instruments. The sponsor expressed some flexibility and a willingness to discuss the matter further with other delegations.

19. Other delegations expressed doubts as to whether the element concerning armed forces of a State, as proposed in document A/AC.252/2005/WP.2, could suitably be considered in the context of article 2.

20. In highlighting the need for a definition, it was noted that it was important that article 2 should reflect all viewpoints, including the proposal made by the member States of OIC in document A/C.6/55/WG.1/CRP.30.

21. In the bilateral contacts, some delegations raised some possible changes, of a technical character, to improve the text of draft article 2. They emphasized that those changes could be made after resolving the key substantive issues.

Article 2 bis

22. Regarding draft article 2 bis, some delegations expressed support for its retention, since it would clarify the legal regime applicable in the event of a conflict between a sectoral multilateral anti-terrorism convention and the comprehensive convention. The importance of preserving the *acquis* of the 12 sectoral multilateral anti-terrorism conventions was stressed.

23. During the bilateral contacts, some delegations expressed flexibility as to the inclusion of article 2 bis, while others suggested minor drafting amendments of a technical character with the view to improving the text. They emphasized that those amendments could be made after the key substantive issues were solved.

Article 18

24. Concerning article 18, some delegations reiterated that it was a choice of law provision. It did not seek to exempt armed forces from the application of international law. Customary and treaty law, including international humanitarian law and the Convention on the Prevention and Punishment of the Crime of Genocide and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment continued to govern the activities of armed forces during armed conflicts. They also stressed that it was important to understand that the draft comprehensive convention was a criminal law instrument, which addressed terrorist activities committed by individuals and groups of individuals, sometimes with the support of States. While it was necessary to address these aspects, delving too much into international humanitarian law would be exceeding the mandate and expertise of the Ad Hoc Committee. These delegations stressed their support for the language proposed by the former coordinator without further amendments.

25. Other delegations also expressed support for the text proposed by the former coordinator, noting that it adequately provided the elements of legal precision required for a criminal law instrument. Since article 18 concerned those who would be excluded from the scope of application of the convention, it was necessary to use unambiguous terms. For those delegations, the term "parties" employed in the text submitted by the member States of OIC did not provide the necessary precision. They noted in this regard, that the Geneva Conventions used the term "High Contracting Parties" instead of "parties". Moreover, they stressed that the value of using the term "armed forces", as proposed in the text by the former coordinator and as opposed to "parties", lay in the fact that it was well defined, with established criteria and was well understood in international humanitarian law.

26. Other delegations observed that the term "parties" should not be understood as "States parties to a treaty" but rather as "parties to a conflict". Such a term is employed in the Geneva Conventions as well as Additional Protocol I and supported by the history behind the elaboration of those instruments, in particular Additional Protocol I. Moreover, the recently published study on customary humanitarian law by ICRC confirms in rule 1 that "parties to conflict" was a term of customary law applicable to both international and non-international armed conflict.

27. Some delegations observed that in the efforts to find a solution to the remaining outstanding issues the Ad Committee should not be constricted by language previously agreed in the sectoral conventions, such as the International Convention for the Suppression of Terrorist Bombings. For them, it was imperative

to explore other possibilities that would generate consensus on article 18. In this connection, it was suggested that instead of reference to "[t]he activities of armed forces during an armed conflict ..." in the text circulated by the former coordinator it might be feasible and appropriate to refer to "[t]he activities during an armed conflict ...". Other delegations recalled that similar suggestions had been made in 2001 and was then found unacceptable by some delegations.

28. Similarly, it was observed that since article 18 addresses issues that ought to be excluded from the scope of the Convention, and it is closely connected to article 2, its placement should be closer to article 2.

Concluding remarks

29. Following previous practice, I would now like to make some personal observations and concluding remarks based on my many years as Vice-Chairman of this Committee and as coordinator on the pending issues on the draft comprehensive convention.

30. First, the consultations on the suggestions contained in the High-level Panel report and Secretary-General's report have been extremely useful. Their encouragement has served to re-energize our negotiations and I am personally confident that we will be able to achieve a positive result within the time frame suggested by the Secretary-General, that is, that we will be able to conclude satisfactorily the negotiation of the comprehensive convention on terrorism by the end of the sixtieth session of the General Assembly.

31. Second, the essential elements for a possible definition of terrorism contained in the report of the High-level Panel and the Secretary-General's report are already reflected adequately in the text of draft article 2. While we all acknowledge that draft article 2 is part of a broader package, still in negotiation, there is growing support for the provisions contained in it. Moreover, current draft article 2 uses more precise technical legal language, more suitable for a criminal law instrument than the language used in the report of the High-level Panel.

32. Third, the mandate of the Ad Hoc Committee is to draft a technical, legal, criminal law instrument that would facilitate police and judicial cooperation in matters of extradition and mutual assistance. Our mandate is not to draft a political definition of terrorism. Therefore, this Ad Hoc Committee must elaborate a text that fulfils the requirements of criminal law — legal precision, certainty and fair labelling of the criminal conduct — all of which emanate from the basic human rights obligation to observe due process. In this context, I am convinced that this Ad Hoc Committee and its sister working group of the Sixth Committee still are the ideal forums to discuss these questions.

33. Fourth, the comprehensive convention on terrorism must preserve and build upon the *acquis* of the previous 12 conventions on terrorism. The elements common to the previous instruments are already incorporated in our draft. Moreover, we must respect the separate and independent character of the legal regimes established by those instruments.

34. Fifth, we still have some pending issues, mainly on questions of choice of law and the precise delimitation between international humanitarian law and the legal regime to be established by the new convention. These issues of a technical character have a wide range of legal and political implications. These issues cannot

simply be set aside. We must confront them resolutely in order to attain a successful result.

35. Sixth, while we are working under the traditional rules of multilateral law-making negotiation, that is, that all proposals remain on the table until withdrawn by their sponsors, and that "nothing is agreed until everything is agreed", there is a clear feeling that substantial progress has been made and that most articles have been agreed upon in principle. Consequently, we must continue to focus on the outstanding issues and we must avoid reopening matters that have already been sufficiently discussed.

36. Seventh, in the coming months, during the intersessional period, I will continue to consult with all interested delegations on possible ways to solve the few pending issues and to reach an agreement on the complete text of the comprehensive convention on international terrorism. I invite them to approach me with their observations and suggestions.

37. Finally, Mr. Chairman, I would like to thank all delegations for their positive disposition during the informal consultations and the bilateral contacts, and for their valuable contributions. I believe success is at hand; we must only make a final effort to reach it.

Annex III

Amendments and proposals

A. Written amendments and proposals submitted by delegations to the Ad Hoc Committee at its current session in connection with the elaboration of a draft comprehensive convention on international terrorism

Proposal submitted by Cuba (A/AC.252/2005/WP.2): new paragraph 4 (d) in article 2

In article 2 of both draft conventions, add a new paragraph 4 (d) reading:

"Being in a position to control or direct effectively the actions of troops belonging to the armed forces of the State, orders, permits, or actively participates in the planning, preparation, initiation or execution of any of the offences set forth in paragraphs 1, 2 or 3 of the present article, in a manner incompatible with international law, including the Charter of the United Nations."

B. Written amendments and proposals submitted by delegations to the Ad Hoc Committee at its current session in connection with the elaboration of a draft international convention for the suppression of acts of nuclear terrorism

Proposal submitted by Pakistan (A/AC.252/2005/WP.1): new preambular paragraph and new paragraph 2 bis in article 4[a]

1. Add to the preamble the following paragraph:

"*Recalling* the provisions, in particular article 15, of Protocol II Additional to the Geneva Conventions of 12 August 1949 relating to protection of works and installations containing dangerous forces".

2. In article 4, add a new paragraph 2 bis reading:

"Nothing in this Convention shall justify undertaking, encouraging or participating in, directly or indirectly, any action aimed at causing the destruction of, or damage to, any nuclear installation or facility."

Proposal submitted by Cuba (A/AC.252/2005/WP.2): new paragraph 4 (d) in article 2[b]

In article 2 of both draft conventions, add a new paragraph 4 (d) reading:

"Being in a position to control or direct effectively the actions of troops belonging to the armed forces of the State, orders, permits, or actively

[a] On 23 March 2005, Pakistan announced the withdrawal of its proposal contained in document A/AC.252/2005/WP.1.

[b] At the 34th meeting, on 31 March 2005, Cuba informed the Ad Hoc Committee of the withdrawal of its proposal contained in document A/AC.252/2005/WP.2 with regard to the draft international convention for the suppression of acts of nuclear terrorism.

participates in the planning, preparation, initiation or execution of any of the offences set forth in paragraphs 1, 2 or 3 of the present article, in a manner incompatible with international law, including the Charter of the United Nations."

Proposal submitted by Egypt (A/AC.252/2005/WP.3): new preambular paragraph after the thirteenth preambular paragraph[c]

After the thirteenth preambular paragraph, insert a new preambular paragraph reading:

"*Recognizing* that the provisions of this Convention should be compatible with the requirements of international law applicable in armed conflict, particularly those of the principles and rules of international humanitarian law".

Proposal submitted by the United States of America (A/AC.252/2005/WP.4): revised text of the third preambular paragraph[d]

At the end of the third preambular paragraph, insert the words:

"while recognizing that the goals of peaceful utilization should not be used as a cover for proliferation".

Proposal submitted by Iran (Islamic Republic of) (A/AC.252/2005/WP.5): amendment to the proposal contained in document A/AC.252/2005/WP.4[e]

Amend the proposal contained in document A/AC.252/2005/WP.4 to read as follows:

"and recognizing also that all the States Parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) undertake to facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy,"

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[c] On 30 March 2005, Egypt announced the withdrawal of its proposal contained in document A/AC.252/2005/WP.3.

[d] On 30 March 2005, the United States of America announced the withdrawal of its proposal contained in document A/AC.252/2005/WP.4.

[e] On 30 March 2005, the Islamic Republic of Iran announced the withdrawal of its proposal contained in document A/AC.252/2005/WP.5.

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